

Honorable Thomas S. Zilly

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON

Cave Man Kitchens Inc.,

Plaintiff and Counterclaim  
Defendant,

v.

Caveman Foods LLC,

Defendant and Counterclaim  
Plaintiff.

NO. 2:18-cv-01274 TSZ

**CAVEMAN FOODS LLC'S REQUEST  
FOR JUDICIAL NOTICE IN SUPPORT  
OF ITS MOTION FOR SUMMARY  
JUDGMENT, OR IN THE  
ALTERNATIVE, PARTIAL  
SUMMARY ADJUDICATION**

**NOTED FOR MOTION CALENDAR:  
October 2, 2020**

**I. INTRODUCTION**

Defendant Caveman Foods LLC ("Defendant"), by and through its attorneys, respectfully submits this Request for Judicial Notice in support of its concurrently-filed Motion for Summary Judgment ("MSJ").

**II. LEGAL STANDARD**

Under Federal Rule of Evidence 201, a court may take judicial notice of a fact that is "not subject to reasonable dispute because it (1) is generally known within the trial court's territorial jurisdiction; or (2) can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned." Fed. R. Evid. 201(b)(1)-(2).

It is well settled that a court "may take judicial notice of court filings and other matters of public record" because they "are readily verifiable and, therefore, the proper subject of judicial notice." *Reyn's Pasta Bella, LLC v. Visa USA, Inc.*, 442 F.3d 741, 746, n.6 (9th Cir. 2006); *Otter v.*

1 *Northland Grp., Inc.*, No. 12-2034-RSM, 2013 WL 2243874, at \*1 (W.D. Wash. May 21, 2013)  
 2 (granting request for judicial notice of documents filed in bankruptcy court); *Gelinas v. U.S. Bank,*  
 3 *NA*, No. 16-1468-JLR, 2017 WL 553277, at \*3 (W.D. Wash. Feb. 10, 2017) (taking judicial notice of  
 4 “authentic documents recorded with a governmental agency,” such as bankruptcy petition).

5 Further, “results of records searches from the Secretary of State [] corporate search website  
 6 can be determined by readily accessible resources whose accuracy cannot reasonably be questioned.”  
 7 *L'Garde, Inc. v. Raytheon Space & Airborne Sys.*, 805 F. Supp. 2d 932, 938 (C.D. Cal. 2011) (taking  
 8 judicial notice of a “Business Entity Detail” record submitted in support of a motion to dismiss);  
 9 *Grassmueck v. Barnett*, 281 F. Supp. 2d 1227, 1232 (W.D. Wash. 2003) (granting request for judicial  
 10 notice of public records kept by the Secretary of State); *Farina Focaccia & Cucina Italiana LLC v.*  
 11 *700 Valencia St. LLC*, (N.D. Cal. Aug. 18, 2015) (granting judicial notice to State Secretary of State  
 12 website information for California and Delaware).

13 Finally, the United States Patent and Trademark Office’s Trademark Status and Document  
 14 Retrieval records are material made publicly available by a government entity on its website and is  
 15 ascertainable and verifiable. *See Reed v. General Mills, Inc.*, NO. C19-0005-JCC, 2019 WL 2475706,  
 16 at \*3 (W.D. Wash. June 13, 2019) (“The Court agrees that trademark registrations downloaded from  
 17 government websites are subject to judicial notice under Federal Rule of Evidence 201(b).”); *Better*  
 18 *Homes Realty, Inc. v. Watmore*, No. 3:16-cv-01607-BEN-MDD, 2017 WL 1400065, at \*2 (S.D. Cal.  
 19 Apr. 18, 2017) (granting request for judicial notice of screenshot of public records filed with the U.S.  
 20 Patent and Trademark Office).

### 21 **III. JUDICIALLY NOTICEABLE DOCUMENTS**

22 Defendant respectfully requests that the Court take judicial notice of the content of the  
 23 following documents and consider them in support of Defendant’s pending MSJ:  
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Exhibit to Williams Decl.	Description
K	A true and correct copy of the business records for Cave Man Kitchens, Inc. (UBI Number 600625485, referenced as “Dissolved Kitchens”) filed with the Secretary of State for the State of Washington, reflecting that entity’s Formation/Registration Date as of November 19, 1981, its Initial Report filed on December 28, 1981, and Corporate License / Annual Report Renewals from 1982, 2005, and 2006.
M	A true and correct copy of the Registration Certificate and Trademark Status Document Retrieval Records (specifically, the trademark application) for U.S. Reg. No. 3,222,887 for CAVE MAN KITCHENS for “Restaurant services; Carry-out and delivery restaurant services; Catering services; Food preparation services” in International Class 43, filed on June 2, 2006, registered on March 27, 2007.
N	A true and correct copy of the Voluntary Petition filed by Cave Man Kitchens, Inc. (“Dissolved Kitchens”) on July 27, 2010 under Chapter 11 in the matter <i>In re Cave Man Kitchens, Inc.</i> , No. 10-18857 (Bankr. W.D. Wash.).
O	A true and correct copy of the Form 6 Bankruptcy Schedules filed by Cave Man Kitchens, Inc. (“Dissolved Kitchens”) on August 16, 2010 under Chapter 11 in the matter <i>In re Cave Man Kitchens, Inc.</i> , No. 10-18857 (Bankr. W.D. Wash.).
P	A true and correct copy of the Order of Dismissal dated February 1, 2011 in the matter <i>In re Cave Man Kitchens, Inc.</i> , No. 10-18857 (Bankr. W.D. Wash.) (“Debtor has failed to file Department of Revenue post-petition tax returns and pay post-petition taxes . . . as ordered by the Court on January 14, 2011”).
Q	A true and correct copy of the Certificate of Administrative Dissolution for Cave Man Kitchens, Inc. (UBI 600625485, “Dissolved Kitchens”) from the Secretary of State for the State of Washington (stating “[i]n accordance with the Revised Code of Washington (RCW), this entity is hereby administratively dissolved as of March 01, 2011.”).

1	U	A true and correct copy of the business records for Cave Man Kitchens, Inc. (UBI
2		Number 603118420, Plaintiff in this action) filed with the Secretary of State for the
3		State of Washington, reflecting that entity's Formation/Registration Date as of and its
4		Articles of Incorporation filed on June 6, 2011.
5	W	A true and correct copy of the business records for Cave Man Kitchens, Inc. (UBI
6		Number 600625485, "Dissolved Kitchens") filed with the Secretary of State for the
7		State of Washington, reflecting that entity's Formation/Registration Date as of and its
8		Articles of Incorporation filed on November 19, 1981, its last annual report filed on
9		February 1, 2007, and its Inactive Date as of and Articles of Dissolution filed on March
10		1, 2011.
11	X	A true and correct copy of the business records for M. Hill Corp. (UBI Number 603 108
12		492) filed with the Secretary of State for the State of Washington, reflecting that
13		entity's Formation/Registration Date as on April 27, 2011 (by Marlis Hill), and its
14		Certificate of Administrative Dissolution filed on August 1, 2012.
15	AA	A true and correct copy of the Complaint for Partition of Real Property and Other Relief
16		filed in the Superior Court of the State of Washington, County of King, Case No. 16-2-
17		27696-2 KNT, filed on November 15, 2016 by Plaintiffs Dale Anna Donley Jarosz and
18		Frank Jarosz v. <i>inter alia</i> Roseanna Loretta Donley.
19	BB	A true and correct copy of the Answer to the Complaint for Partition of Real Property
20		and Other Relief and Affirmative Defenses filed by Roseanna Donley in the Superior
21		Court of the State of Washington, County of King, Case No. 16-2-27696-2 KNT, on
22		January 6, 2017.
23	CC	A true and correct copy of the Order dismissing without prejudice (in view of "More
24		than forty five (45) days . . . passed since the scheduled trial date" of "11/13/2017")
25		Case No. 16-2-27696-2 KNT in the Superior Court of the State of Washington, County
26		of King, on August 1, 2018.

DD	A true and correct copy of the Combined Declaration of Use and Incontestability under Sections 8 & 15 for U.S. Registration No. 3,222,887 signed by the President of Cave Man Kitchens, Inc., Roseanna Donley, and filed with United States Patent and Trademark Office on March 27, 2013.
EE	A true and correct copy of a screenshot from the United State Patent and Trademark Office's Trademark Status and Document Retrieval website for the registered service mark, Registration No. 3,222,887 (the "Cave Man Kitchens Registration") as of September 9, 2020: "Assignment Abstract Of Title Information – None recorded".
II	A true and correct copy of the Notice of Intent to Withdraw filed by Roseanna Donley's attorney, Kristin G. Olson, in Case No. 16-2-27696-2 KNT in the Superior Court of the State of Washington, County of King, on April 3, 2017.

Here, these exhibits are all court filings and/or matter of public records from government entities. In the earlier action between the parties, the Court took judicial notice of many of the same the documents that are the subject of this Request, i.e., the current Exhibits N, P, Q, U, W, and EE. (*See* Case 2:18-cv-00273-TSZ, Dkts. 15 [Request for Judicial Notice], 23 at 1 n.1 [Order granting].) Also, in this action, Judge Jones took judicial notice of many of the same the documents that are the subject of this Request, i.e., the current Exhibits N, O, P, Q, U, and W. (*See* Dkt. 17 [Request for Judicial Notice], 30 at 4-5 [Order granting].) The Court, therefore, should grant Defendant's request for judicial notice.

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**IV. CONCLUSION**

Based on the foregoing, Defendant respectfully requests that the Court enter an order taking judicial notice of Exhibits K, M, N, O, P, Q, U, W, X, AA, BB, CC, DD, EE, and II to the Declaration of Meredith Williams.

DATED this 8th day of September, 2020

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